D.B. INCOME TAX APPEAL NO.75/2006

M/s Kashmir Trading Company
Vs.
Dy. Commissioner of Income Tax, Sriganganagar.

Date : 11.9.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Suresh Ojha for the appellant.

BY THE COURT: (PER HON'BLE R. BALIA, J.)

Heard learned counsel for the appellant.

This appeal is under Section 270-A of the Income Tax Act, 1961 by the Assessee. The assessee suggested the following substantial questions stating them to be substantial questions of law arising for consideration in this appeal:-

1. Whether the Hon'ble Tribunal was justified in not accepted the claim of bed debt, especially when necessary evidence in respect of the

fact that the debt become bad has already been produced?

2. Whether the Hon'ble Tribunal was justified in not allowing the bad debt in view of the judgment of Hon'ble Calcutta High Court decided in case of CIT Vs. Dunlop India Limited reported in 209 I.T.R. Page 221 and 227 the Hon'ble Court held that the entry of writing off is prima facie evidence of the debt having become bad but not a conclusive criterion and the onus rests on the assessee to establish that the debt has become bad in the relevant year?

3. Whether the Tribunal was justified in not accepting the bad debt, especially when the assessee established that the debt has become bad in the relevant year?

4. Whether the Hon'ble Tribunal was justified in not accepting the bad debt especially when the books of accounts were in the custody of the department, till the disposal of the even appeal by the Hon'ble Tribunal and not returned to the appellant assessee and the return was submitted on the basis of photo state copy of the books as provided by the department?

Learned counsel has urged that a claim for deduction of bad debts from the gross profits of the assessee has not been allowed primarily on the ground that the assessee has not written off a debts in his books of accounts for the financial year ending on 31st March, 1999 for the relevant assessment year 1999-2000 which is statutory condition required to be fulfilled before deduction on account of bad and doubtful debts in any assessment year can be claimed while computing taxable income for that year.

Having perused the assessment order, the order of the Commissioner (Appeals) and the order of the Tribunal, we find that this contention is not substantiated.

The assessee contends that since books of accounts for financial year ending on 31st March, 1999 had been seized by the officers of the Income Tax Department in a survey and search conducted on the assessee's business premises in July 2000 it was not

physically possible for him to have complied with the statutory condition of writing off bad debts in his books of accounts for the year ending on 31st March, 1999 and, therefore, the Tribunal ought to have sustained the claim of the assessee on the merit because the assessee has established that the debt amount claimed by the assessee Rs.2,89,750/- had actually become bad and recoverable during the previous year relevant to assessment year 1999-2000 without insisting on fulfillment of a condition which was not permissible to be complied with.

From the perusal of the assessment order, and the orders of the Commissioner of Income Tax (Appeals) and of the Tribunal sustaining the dis-allowance made by the Assessing Officer the aforesaid claim of the assessee show that the contention of the assessee is not well founded. It is not in dispute that search took place on 29th July, 1999 almost 4 months after the close of the financial year on 31st March, 1999 and until then no entries of the aforesaid sum as bad debts has been made in the books of accounts. There is

no denial of the fact that under clause (7) of sub-section (1) of Section 36 permits that the deduction of any amount of bad debts or part thereof is subject to provisions of sub-section (2) of Section 36. According to said provision only such sum is to be allowed as deduction by way of bad and doubtful debts which is written off in the account of assessee for the previous year.

Sub-section (2) of Section 36 makes it abundantly clear that merely writing off any amount as a bad debts in the books of accounts irrecoverable is not ipse dixit results in deducting said sum while computing taxable income in accordance with the provisions of the Income Tax Act, 1961. The requirement of sub-section (2) is to be established even in case where a sum is written off in the books of accounts as an irrecoverable debts. The enquiry into a condition required under Sub-section (2) is still required to be made but such enquiry is required to be made only when a debt is written off in the books of accounts. Therefore, it becomes a condition precedent before any claim for deduction on

account of debt becoming bad is inquired into. In the absence of such entries made in the books of accounts, the process of examining its claim with reference to sub-section (2) of section 36 does not commence.

The assessee's contention that the writing off any sum as bad and doubtful debt as if it has become irrecoverable is not a entry recalling transaction, but is a necessary adjustment to find out true result of the business after completion of year and making of profit and loss account. In the facts and circumstances, even in such event, the claim was liable to be legated since the books of accounts were seized on 29th July, 1993 that is to say after four months after the close of previous year and until that time no such entries have been made in the books of accounts when the books were in the possession of the assessee. On this ground also the assessee claim has not been found tenable, which in the facts and circumstances, cannot be said to be unsustainable.

On the ipse dixit of the assessee, it cannot be

assumed that until after expiry of 4 months, the assessee had any cause for not making adjustment in the books of accounts, particularly in respect of bad dept where no further computation was required to be made but was merely a decision to be taken by the assessee himself whether the debt has become irrecoverable or not until 31st March, 1999.

Apart from the legal issue, answer to which is clear from the provisions itself, the Assessing Officer as well as the Appellate Authority have examined the claim of the assessee that the debt has actually become recoverable during the previous assessment year 1999-2000 and have also held that assessee has failed to prove that debts in question had actually become irrecoverable during the previous year in question. The material circumstances relied in this connection are that the assessee only furnished list of debts but the details of three years of such account have not been furnished because the same has been lying with the Assessing Officer.

These findings were affirmed by the Tribunal. The bad debts have been disallowed by considering the material on record by finding as a fact that the debt has not been recoverable during the previous year relevant to the assessment year in question and this is a finding of fact and in that view of the matter other questions, even if held to be questions of law, become of academic importance, not affecting the result, it cannot be treated as substantial question of law. Hence, this appeal cannot be entertained.

The appeal, therefore, fails and is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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